IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2084 OF 2007
IN
WRIT PETITION NO. 5365 OF 1987
ALONG WITH
CIVIL APPLIATION NO.2085 OF 2007
IN
WRIT PETITION NO.5365 OF 1987

Narayan Hari Waghmare (deceased)
Through his heirs and legal
Representatives :-

1A. Kusum Narayan Waghmare
and Ors. .....Petitioners.

V/s

1. Madhukar Yeshwant Deshpande .....Respondent.
(deceased)

And

1A Vijay Mahukar Deshpande & Ors. .....Proposed Respondents.

Mr. Dushyant Purekar i/b Rajive Patil for the Petitioners.

Ms. Asha Bhambwani for Respondent Nos. 1A to 1E.

CORAM: V.M. KANADE, J.
DATE : 5th October, 2007

P.C.:

1. Petitioners seek restoration of Petition which was abated since the heirs of Respondent No.1 were not brought on record. Respondent No.1 died on 20/5/1992. Initially, Civil Application being Civil Application Stamp No. 22335 of 1992 was filed by Petitioners herein for bringing heirs and legal representatives of deceased Respondent No.1 on record. This Civil Application was dismissed for want of prosecution on account of non removal of office objections. Thereafter, Writ Petition No.5365 of 1987 was dismissed on 13/06/1997 since heirs of deceased Respondent No.1 were not brought on record. Thereafter, present Civil Application has been filed for almost after a lapse of 10 years.

2. It is submitted by the learned Counsel appearing on behalf of Petitioners that the first Civil Application was wrongly dismissed for want of prosecution. It is submitted that the office note indicates that respondents were not served. He invited my attention to the endorsement made by the clerk of the advocate appearing on behalf of Respondent No.1. He submitted that the advocate appearing on behalf of Respondent No.1 had been served and the Office, therefore, wrongly dismissed this Civil Application for want of prosecution. It is further submitted that, therefore, the order dated 13/06/1997 also was passed on the footing that no steps were taken by Petitioners to bring the heirs of deceased Respondent No.1 on record. He submits that Petitioners were under bonafide impression that the Petition is pending and only when other two matters were placed on the final hearing board, they made inquiries and came to know that this matter

has been dismissed.

3. The learned Counsel appearing on behalf of Respondent Nos.1A to 1E, however, submits that when the order was passed by this Court in main Petition on 13/06/1997, the Counsel for Petitioners had appeared and, therefore, he was aware of the said order and even thereafter for 10 years no steps have been taken.

4. In my view, there is a gross delay in filing this Civil Application for bringing the heirs of deceased Respondent No.1 on record. The first Civil Application was dismissed for want of prosecution. Thereafter, the main Writ Petition was also dismissed on 13/06/1997. No steps have been taken by Petitioners thereafter for a period of 10 years. The main Writ Petition itself is of the year 1987. No sufficient cause has been shown by Petitioners for condonation of delay. Hence, Civil Application is dismissed.

5. In view of this Order Civil Application No.2085 of 2007 does not survive and the same is accordingly dismissed.

(V.M. KANADE, J.)